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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PERCH AGARONYAN et al., Plaintiffs and Appellants, v. WAWANESA GENERAL INSURANCE COMPANY, Defendant and Respondent.	B236522 (Los Angeles County Super. Ct. No. BC451021)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard L. Fruin, Jr., Judge. Reversed and remanded with directions.

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Silverberg Law Corporation and Peter M. Cho for Plaintiffs and Appellants.

Law Offices of Kenneth N. Greenfield, Kenneth N. Greenfield and Janice Y. Walshok for Defendant and Respondent.

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Plaintiffs appeal from the judgment entered after the trial court sustained without leave to amend the demurrer filed by Wawanesa General Insurance Company in this action for breach of contract, breach of the implied covenant of good faith and fair dealing and violation of Business and Professions Code section 17200. Plaintiffs contend that the trial court erroneously sustained the demurrer on the ground that, under Code of Civil Procedure section 378[1], they are not properly joined as plaintiffs in one lawsuit against Wawanesa. Because we conclude that section 378 permits joinder of the plaintiffs in this case, we reverse the judgment and remand the matter to the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Complaint*

On December 10, 2010, Perch Agaronyan and 13 other plaintiffs filed an action against Wawanesa for breach of contract, breach of the implied covenant of good faith and fair dealing and violation of Business and Professions Code section 17200, alleging that Wawanesa in bad faith denied or underpaid their insurance claims resulting from fire, soot, ash, char and wind damages sustained in the Southern California wildfires in August and September 2009. Without specifying the practices employed with respect to each plaintiff's claim, plaintiffs generally alleged that Wawanesa "failed to properly handle and adjust plaintiffs' claims in good faith and, in fact, instituted claims practices designed to improperly deny and/or minimize valid claims, placing [its] own financial interests above the interests of the[] policyholders, in violation of [its] contractual obligations." According to plaintiffs, Wawanesa "maintained a bad faith pattern and practice by handling similarly situated claims differently if policyholders were represented by an independent adjuster or an attorney. Among other things, defendants hired biased consultants to aid in denying or minimizing claims where insureds were represented by an attorney or public adjuster." Plaintiffs sought compensatory and punitive damages, attorney fees and costs, restitution and injunctive relief.

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[1] Statutory references are to the Code of Civil Procedure unless otherwise specified.

2. *The Demurrer and the Trial Court's Ruling and Judgment*

On February 14, 2011, Wawanesa filed a demurrer to the complaint, contending that, under section 378, "[p]laintiffs' [c]omplaint contains a misjoinder of parties, as [p]laintiffs' rights to relief do not arise out of the same transaction or series of transactions, and that Wawanesa will be prejudiced thereby." According to Wawanesa, section 378 does not permit joinder of plaintiffs in this case because "[t]hese plaintiffs own 14 separate parcels of real property[,] which they claim suffered fire, soot, ash, char, and wind damage resulting from the August 2009 Southern California wildfires. Plaintiffs' properties were insured under 14 separate policies at the times of the alleged damages. Plaintiffs presented to Wawanesa 14 separate claims for benefits, at 14 different times. After thorough, independent investigations, conducted at different times, Wawanesa paid out widely differing amounts for each policyholder's claims, at 14 different times." Wawanesa, therefore, sought dismissal of the action. (See § 430.10, subd. (d) [permitting demurrer to complaint on ground of misjoinder of parties].)

Plaintiffs opposed the demurrer, arguing that joinder was proper under section 378 because (1) "all [p]laintiffs are asserting claims severally for [the bad faith] failure to pay insurance benefits"; (2) plaintiffs "are asserting claims arising from the Station Fire against [Wawanesa] pursuant to [Wawanesa's] property insurance policies"; and (3) plaintiffs "have placed at issue common questions of law and fact based on their allegations that [Wawanesa] maintained bad faith patterns and practices of claims handling with respect to all [p]laintiffs and other insureds . . . ."

Based on the parties' submissions, and after hearing argument, the trial court sustained Wawanesa's demurrer without leave to amend. The court concluded, "There is a misjoinder of the parties plaintiff. CCP 410.30(d). CCP 378 permits joinder if the plaintiffs' rights to relief arise 'out of the same transaction, occurrence, or series of transactions or occurrences' but only 'if any question of law or fact common to all these persons will arise in the action.' Although a single event, i.e., the firestorm in Southern California in 2009, resulted in damage to each plaintiff's home, the circumstances surrounding the damage to each home is too individualized to permit this

case to proceed with 14 plaintiffs. There is at least one common question of law or fact among all of the 14 plaintiffs, i.e. the allegation that defendant insurer 'instituted claims practices designed to improperly deny and/or minimize valid claims . . . .' [Citation.] But as the *Farmers* court (*Farmers Ins. Exchange v. Adams* (1985) 170 Cal.App.3d 712, 722-23, disapproved on other grounds in concurring opinion in *Garvey v. State Farm Fire & Casualty Co.* (1989) 48 Cal.3d 395, 415) similarly found, there is no 'same' transaction, occurrence, or series of transactions or occurrences here. Both elements must be present in order for plaintiffs to join in one action. [¶] In *State Farm Fire and Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093 (disapproved on other grounds in *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163), the court found joinder appropriate. In *State Farm*, the conduct of the insurance company was uniform whereas, in *Farmers*, the homeowners' damages depended on what structures were affected and the location of those buildings." The court entered judgment for Wawanesa. Plaintiffs filed a timely notice of appeal.[2]

DISCUSSION

Section 378, the permissive joinder statute, allows all persons to join in one action as plaintiffs, if "[t]hey assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action . . . ." (§ 378, subd. (a)(1).) Under section 378, "the action of each plaintiff [is] joined in one case, but they remain independent actions." (*Brennan v. Superior Court* (1994) 30 Cal.App.4th 454, 461.) The statute "'"contemplates . . . an action single in form, but with each 'case' or demand retaining its distinctive identity as though pleaded in an independent action. No plaintiff is interested in the entire complaint. The interest of each is in his own 'case' or cause of action; and the complaint

[2] One of the plaintiffs, Armen Antonyan, requested a dismissal of his case with prejudice after judgment had been entered and the notice of the appeal had been filed. The clerk entered the dismissal as requested. Antonyan's appeal thus is moot, and his appeal is dismissed.

as a whole is merely a series of 'cases' embodied in one document. The institution of a joint action thus amounts to an election to consolidate at the outset several causes of action for trial instead of bringing several actions based on common grounds, and then having them consolidated later.'" [Citations.]" (*Id.* at pp. 461-462.)

"'[T]he purpose of section 378 is to permit the joinder in one action of several causes arising out of identical or related transactions and involving common issues. The statute should be liberally construed so as to permit joinder whenever possible in furtherance of this purpose.' [Citation.]" (*Moe v. Anderson* (2012) 207 Cal.App.4th 826, 832-833, fn. omitted.) In other words, section 378's "requirement that the right to relief arise from the 'same transaction or series of transactions' has been construed broadly so that joinder of plaintiffs is permitted if there is *any* factual relationship between the claims alleged. [Citation.]" (*State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1113 (*State Farm*), disapproved on another ground in *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 184-185.)

Based on the statutory language, and its liberal construction, the trial court erred by sustaining the demurrer to plaintiffs' complaint on the ground of misjoinder. Plaintiffs assert a right to relief severally for damages caused by the same natural disaster—the Station Fire—and from Wawanesa's alleged institution of "claims practices designed to improperly deny and/or minimize valid claims." Although, as Wawanesa points out, plaintiffs' claims may differ in certain respects, including extent of damage and adjustment of loss, those differences do not render joinder inappropriate, given plaintiffs' claims satisfy the statutory language permitting joinder based on the same series of transactions or occurrences and common questions of law or fact.

State Farm, *supra*, 45 Cal.App.4th 1093 is instructive. In that case, 165 individual plaintiff insureds sued two State Farm entities after they suffered damage to their homes in the 1994 Northridge earthquake. According to plaintiffs' allegations, State Farm changed its manner of providing earthquake coverage from an endorsement to a separate policy, and the change was made "without their consent and without adequate notice of

the significant reduction in coverage[,] which [plaintiffs] claim was the object and result of this tactic." (*Id*. at p. 1099.) "Plaintiffs then alleged some 15 different types of 'improper claims handling processes[,]' which were engaged in by State Farm. Plaintiffs allege that State Farm 'systematically, methodically and generally' engaged in these 'improper, unfair and unreasonable claims practices.'" (*Id*. at pp. 1099-1100.)
The appellate court concluded that the joinder of plaintiffs was proper under section 378. Recognizing that "not every plaintiff may have been victimized by the same claims handling process," the court determined that plaintiffs' allegations that "State Farm engaged in a systemic practice to deceive its policyholders with respect to their purchase of earthquake insurance" and employed "systemic claims handling practices[,] which invaded the rights of plaintiffs as insureds[,]" satisfied the joinder requirements of the same transaction or series of transactions and common issues of law and fact.
(*Id*. at p. 1113.)

The same is true here. Although not every plaintiff may have been subject to the exact same claims handling with respect to his or her insurance claim relating to damages from the Station Fire, plaintiffs allege systemic claims handling practices, establishing commonality of law and fact. Although Wawanesa maintains that *State Farm* is different from this case, we disagree. Wawanesa focuses on the allegation in *State Farm* that the insuring entities engaged in the common practice with respect to all plaintiffs of changing their earthquake coverage without their consent and without adequate notice and argues that such a common practice is absent here. But *State Farm* involved more than the allegation regarding the change in plaintiffs' earthquake coverage. It also involved allegations regarding systemic claims handling—allegations that are present in this case.

Wawanesa's reliance on *Farmers Ins. Exchange v. Adams* (1985) 170 Cal.App.3d 712 (*Farmers Ins. Exchange*), disapproved on another ground in *Garvey v. State Farm Fire & Casualty Co.* (1989) 48 Cal.3d 395, 398-399 and footnote 1, to support its misjoinder argument is not persuasive. In that case, an insurance company brought a declaratory relief action against hundreds of insured homeowners seeking a determination that, based on exclusions and exceptions in the homeowners' policies, the homeowners'

claims for damages caused by a heavy storm in January 1982 were not covered by their insurance policies. (*Id*. at pp. 715-716.) According to the insurance company, "'said policies do not provide coverage for damage or losses arising out of the January storm because the efficient proximate cause of the damage or loss claimed was an excluded cause, notwithstanding that one or more intermediate causes may have contributed to the loss or damage.'" (*Id*. at p. 716.) The appellate court upheld the homeowners' challenge to the complaint based on misjoinder of defendants, concluding that, "[w]hile it may be possible to join certain of the Insureds upon more specific factual allegations, we find it improper to label the damage herein to innumerable types of structures, occurring at widely separated locations within the state, resulting from a myriad of causes, and under various conditions as the 'same transaction or occurrence' within the meaning of . . . section 379[,]" the statute governing joinder of defendants. (*Id*. at p. 723.)

Although Wawanesa seizes on the language in *Farmers Ins. Exchange* using the differences in the homeowners' claims to uphold a joinder challenge, such language does not render joinder inappropriate in this case. The misjoinder in *Farmers Ins. Exchange* was asserted by the homeowner defendants against the insurer plaintiff, not as in this case in which the misjoinder is asserted by the insurer defendant against the insured plaintiffs who joined their claims together as plaintiffs. As the same appellate court that decided *Farmers Ins. Exchange* recognized just a year earlier, "'[a]lthough the code seems to authorize the sustaining of a demurrer solely [for misjoinder of parties], the authorities indicate that the defendant is entitled to a favorable ruling only when he can show some prejudice suffered or some interests affected by the misjoinder. In practical effect this means that such a demurrer can be successfully used only by the persons *improperly joined*. A proper defendant is seldom injured by the joinder of unnecessary or improper parties plaintiff or defendant, and his demurrer ought to be overruled. [Citations.]' [Citation.]" (*Anaya v. Superior Court* (1984) 160 Cal.App.3d 228, 231, fn. 1.) In *Anaya*, the appellate court held the joinder of plaintiffs was proper in a case in which numerous employees and their families joined together to sue an oil company based on chemical exposure to the employees over a 20- to 30-year period. (*Id*. at p. 231.) According to the

appellate court, "[t]he employees are said to have been exposed to harmful chemicals at one location over a period of many years by inhalation, drinking of water, and physical contact. Thus, they were all involved in the same series of transactions or occurrences and assert rights to relief therefrom. The fact that each employee was not exposed on every occasion any other employee was exposed does not destroy the community of interest linking these [plaintiffs]." (*Id*. at p. 233.) As a result, *Farmers Ins. Exchange*, involving a misjoinder of defendants, presented a different challenge than the alleged misjoinder of plaintiffs here, and, as in *Anaya*, the fact that differences exist among the plaintiffs' claims against Wawanesa does not destroy the commonalities that permit joinder under section 378.

Moreover, Wawanesa's claims of prejudice do not warrant a different result. According to Wawanesa, it will suffer prejudice by the joinder of plaintiffs because "great confusion would occur if jurors were compelled to distinguish between the various facts of each of the 14 [now 13] separate claims[,]" as plaintiffs allege that "some claims were denied and some claims were underpaid, [and] different witnesses, experts, and defenses would apply to each of the claims. . . . In addition to the complicated verdict form that would be employed by the jury, the jury would likely be confused by the 14 [now 13] separate issues, claims, and defenses involved." But, "[w]hen parties have been joined under Section 378 . . . , the court may make such orders as may appear just to prevent any party from being embarrassed, delayed, or put to undue expense, and may order separate trials or make such other order as the interests of justice may require." (§ 379.5.) The trial court, therefore, can mitigate any issues that may arise regarding the differences in claims or witnesses to prevent Wawanesa from suffering any prejudice. (See, e.g., *State Farm*, *supra*, 45 Cal.App.4th at pp. 1113-1114 ["trial court will always retain the right [under § 379.5] to sever the claims of particular plaintiffs in order to prevent prejudice to [the defendant]"]; *Anaya v. Superior Court*, *supra*, 160 Cal.App.3d at pp. 233-234 ["difficulty a jury may have in keeping track of the testimony of over 200 plaintiffs and . . . other legitimate practical concerns" may be addressed by proceedings under § 379.5 and thus "do not furnish grounds for finding a misjoinder of

plaintiffs"].) Wawanesa also maintains that joinder is improper because there is no guarantee the trial court will employ measures under section 379.5 as the case progresses to mitigate any prejudice against it. But it cites no authority suggesting that the possibility a trial court may make errors in the future is a reason to override established law allowing joinder of plaintiffs when the plaintiffs' claims arise out of the same transaction or series of transactions and have a common issue of law or fact.

DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court with directions to enter an order overruling the demurrer on the ground of misjoinder. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.